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MONTANA LEGISLATIVE HISTORY

Chapter 258 19 91

Bill H 667 S _____ Original bill & history ____C

H. Committee on Labor & Employment Relations		S. Committee on Labor & Employment Relations	
Hearing Date(s) Feb 14	✓ C	Hearing Date(s) Mar 05	✓ C
_____	____C	Mar 12	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Feb 15	✓ C	Mar 13	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/23 TABLED IN COMMITTEE

HB 663 INTRODUCED BY DOWELL
EXPAND APPLICATION OF PROVISIONS OF THE UNIFORM ARBITRATION ACT

2/07	INTRODUCED		
2/07	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/07	FIRST READING		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	95	5
2/26	3RD READING PASSED	91	7
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/05	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	48	0
3/16	3RD READING CONCURRED	47	2
	RETURNED TO HOUSE		
3/22	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 258	EFFECTIVE DATE: 3/29/91	

HB 664 INTRODUCED BY SOUTHWORTH, ET AL.
FUND MEDICAL RESEARCH FACILITIES PROJECTS

2/07	INTRODUCED
2/07	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
2/07	FIRST READING
3/06	HEARING
3/15	HEARING
3/16	COMMITTEE REPORT—BILL PASSED AS AMENDED
3/18	REREFERRED TO APPROPRIATIONS
3/21	HEARING
3/23	TABLED IN COMMITTEE

HB 665 INTRODUCED BY BARNHART, ET AL.
REQUIRE CERTAIN SCHOOL DISTRICTS TO HAVE EARTHQUAKE EMERGENCY PLANS

2/07	INTRODUCED		
2/07	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/07	FIRST READING		
2/07	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/20	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	87	10
2/26	3RD READING PASSED	88	10
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/18	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED		
4/09	2ND READING CONCURRED	44	1
4/10	3RD READING CONCURRED	46	4
	RETURNED TO HOUSE		
4/17	SIGNED BY SPEAKER		

no depots left if this legislation is not passed. The Burlington Northern Railroad doesn't care about public concerns.

HEARING ON HB 663

Presentation and Opening Statement by Sponsor:

REP. TIM DOWELL, House District 5, Kalispell, presented amendments. **EXHIBIT 15.** The purpose of HB 663 as amended will allow arbitration under labor agreements to be compelled or enforced under the Uniform Arbitration Act.

Proponents' Testimony:

Phil Campbell, Montana Education Association, presented sections of the Uniform Arbitration Act pertinent to HB 663. **EXHIBIT 16.** Currently, parties to a labor agreement can use the Uniform Arbitration Act, Section 312-313, only to vacate an arbitrator's award or modify an arbitrator's award. With the amendment, the bill will allow the parties to use the Arbitration Act to compel or enforce arbitration if arbitration is in the contract.

Opponents' Testimony: None

Questions From Committee Members:

REP. JOHNSON asked **Mr. Campbell** if he had talked with Rep. Kimberley about his bill similar to this bill. **Mr. Campbell** said HB 663 has nothing to do with the bill sponsored by Rep. Kimberley. That bill deals with arbitration in lieu of striking. HB 663 pertains to parties, who have agreed to include arbitration in the contract, can compel arbitration when one party doesn't want to participate and can go into court.

REP. BENEDICT asked **Mr. Campbell** what the procedure was now. **Mr. Campbell** said because of the recent Supreme Court Decision relating particularly to school employees, they must go through the Administrative Procedures Act before going to court. For example, there is a contract with grievance arbitration and the employer doesn't want to participate. Under the current law, school employees have to go through the county superintendent and state superintendent. Section 27-5-115 of the Uniform Arbitration Act says upon application to the court, the court can compel arbitration if there is arbitration in the contract. It is a procedural matter and simplifies the process for all parties. **REP. BENEDICT** said that the bill bypasses the different steps and allows somebody to go to District Court and to direct arbitration. **Mr. Campbell** said yes.

REP. HANSON said that if everybody agrees and it is in the agreement but the items given are mandatory in each case. It reads, "and enforceful and may be subject to all or portions of this chapter if the agreement so specifies except these will apply in every case." That means automatically when there is an

arbitration problem everything is bypassed and immediately goes to court. **Mr. Campbell** said that the current law says there are two exceptions that apply in all cases which are Section 312 and 313. That means the Arbitration Act can be used to vacate an award. It can be vacated in Court. They would also like to be able to do under the Uniform Arbitration Act, they can go into Court anyway. This is just a procedure of the route that is used. This is a simpler route. The Uniform Arbitration Act can be used because there is a section that deals directly with the issue of compelling arbitration or enforcement of the award. The route that is used now is a breach of contract. The whole act is not to apply because many procedures in the arbitration process are taken care of in the collective bargaining agreements.

Closing by Sponsor:

REP. DOWELL closed the hearing on HB 663.

HEARING ON HJR 18

Presentation and Opening Statement by Sponsor:

REP. DAN HARRINGTON, House District 68, Butte, said the McBride Principles are nine equality of opportunity guidelines for United States Companies doing business in Northern Ireland. Proponents of the McBride Principles hope by pressuring United States firms operating in Northern Ireland to follow non-discriminatory hiring and promotion practices, they will combat persuasive, religious and discrimination in employment practice in the province. The nine principles are: (1) Increasing representation for individuals from unrepresented religious groups in workplace including managerial, supervisal, administrative, clerical, and technical jobs. (2) Adequate security for the workplace and while traveling to and from work. (3) Banning of provocative, religious, or political emblems at the workplace. (4) All job openings should be publicly advertised, and special recruitment efforts should be made to attract applicants from under-represented religious groups. (5) Layoffs, recalls, or termination procedures should not practice favor particular religious groups. (6) The abolishment of job reservations, apprenticeships, restrictions, and differential employment criteria which discriminates on the basis of religion and ethnic origin. (7) The development of training programs that will prepare substantial number of current minority employees for skill works including expansion of existing programs and the creation of new programs to train, upgrade, and approve skills of minority employees. (8) The establishment of procedures to assess, identify, and actively recruit minority employee's potential for further advancement. (9) The appointment of senior management staff members to oversee the company's affirmative action efforts in setting up a timetable to carry out affirmative action principles. In Northern Ireland, 40 percent of the population is Catholic, and only 3 percent are given factory jobs. Presently, twelve states have accepted the principles and

gone. The amendment of subsection (8) clarifies that the agreement is between the claimant and the insurer.

Vote: **HB 506 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HJR 18

Motion: **REP. PAVLOVICH MOVED HJR 18 DO PASS.**

Discussion:

REP. JOHNSON said his reservation is about Page 4, Item 4. The state's retirement system should be trying to earn as much money as possible. Montana's funds shouldn't be limited.

Vote: **HJR 18 DO PASS.** Motion carried 17 to 1 with Rep. Johnson voting no.

EXECUTIVE ACTION ON HB 663

Motion: **REP. PAVLOVICH MOVED HB 663 DO PASS.**

Motion/Vote: **REP. PAVLOVICH** moved to amend HB 663. **EXHIBIT 22.** Motion carried unanimously.

Vote: **HB 663 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 271

Motion: **REP. WHALEN MOVED HB 271 DO PASS.**

Motion/Vote: **REP. DRISCOLL** moved to amend HB 271. **EXHIBIT 3.** Motion carried unanimously.

Motion/Vote: **REP. WHALEN MADE A SUBSTITUTE MOTION THAT HB 271 DO PASS AS AMENDED.** Motion carried 15 - 3 with Reps. Benedict, Thomas, and Johnson voting no.

EXECUTIVE ACTION ON HB 628

Motion/Vote: **REP. WHALEN MOVED HB 628 DO PASS.** Motion carried 11 - 7. **EXHIBIT 23**

EXECUTIVE ACTION ON HB 730

Motion: **REP. WHALEN MOVED HB 730 DO PASS.**

Discussion:

REP. WHALEN asked **Ms. McClure** if a coordinating clause was needed for HB 628 and HB 730. **Ms. McClure** said HB 730 amends Section 1, which changes the population, and HB 628 amends Section 2, which changes the definition of public convenience and necessity. There isn't a conflict.

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 2/14/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

CS05COM.man

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 663 (first reading copy -- white) do pass as amended .

Signed: _____
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 1, line 17.
Following: "except"
Insert: "27-5-115,"

(4) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 236 in (2), at beginning of second sentence, inserted exception clause; inserted (3) allowing members of trade or professional organization to submit future controversies to arbitration; and made minor changes in phraseology and form.

Chapter 611 in (2)(b) changed dollar amount limitation from $35,000 or less to $5,000 or less; and made minor changes in form and phraseology.

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

27-5-115. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: En. Sec. 5, Ch. 684, L. 1985.

EXHIBIT 16
DATE 2/14/91
1037 HB 663

Cross-References

No specific performanc
ment prior to 1985, 27
amendment).

Statute of Limitations
arbitration, 27-2-405.

27-5-201 throu

Compiler's Comments

Histories of Repealed

27-5-201. En. Sec
Stat.; re-en. Sec. 362, p.
436, p. 122, Cod. Stat.
164, L. 1877; re-en. Sec.
1879; re-en. Sec. 476, 1s
re-en. Sec. 2274, C. Civ
7369, Rev. C. 1907; re
1921; Cal. C. Civ. Proc
9976, R.C.M. 1935; R.C.

27-5-202. Ap. p. S
Stat.; re-en. Sec. 361, p.
435, p. 122, Cod. Stat.
164, L. 1877; re-en. Sec
1879; re-en. Sec. 475, 1s
re-en. Sec. 2273, C. Civ
7368, Rev. C. 1907; r
1921; Cal. C. Civ. Pro
9975, R.C.M. 1935; Sec

27-5-204 thro

27-5-211. Ap
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of a party shall a
has all the powers
History: En. Sec.

27-5-212. M
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ment or by this c
History: En. Sec.

27-5-213. H
following apply:
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not less than 5
such notice. The
necessary and, o

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

History: En. Sec. 12, Ch. 684, L. 1985.

27-5-218. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

History: En. Sec. 13, Ch. 684, L. 1985.

Cross-References

Cost of arbitration between firefighter and public employer, 39-34-106.

Part 3

Procedure Following Award

27-5-301 through 27-5-304. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-301. En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.

27-5-302. En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

27-5-303. En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.

27-5-304. En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

27-5-305 through 27-5-310 reserved.

27-5-311. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits

EXHIBIT 16
DATE 2/14/91
HB 663

imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: En. Sec. 14, Ch. 684, L. 1985.

27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985.

27-5-313. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

27-5-314. Judgment on award — costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

27-5-315 through 27-5-320 reserved.

27-5-321. Applications to court — how made. Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

27-5-322. Jurisdiction of district court. The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

Cross-References

Statute of Limitations tolled by submission to arbitration, 27-2-405.

27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

History: En. Sec. 20, Ch. 684, L. 1985.

27-5-324. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5-115(2);

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS COMMITTEE BILL NO. 663

DATE 2/14/91 SPONSOR(S) Rep. Tim Dowell

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Phil Campbell	Mont. Ed. Assoc.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Reardon felt is high. He explained court reporters are contracted when he travels at a cost of approximately $14,000 per year. He stated he is doing more hearings than the department at the present time, but the department will do more in the future.

Closing by Sponsor:

Representative Rice closed on House Bill 305.

EXECUTIVE ACTION ON HOUSE BILL 305

Motion:

Senator Lynch moved to TABLE House Bill 305.

Recommendation and Vote:

Motion to TABLE CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 663

Presentation and Opening Statement by Sponsor:

Representative Tim Dowell presented House Bill 663.

Proponents' Testimony:

Phil Campbell of the Montana Education Association told the Committee labor agreements are generally not included under the Uniform Arbitration Act with the exception of an arbitration award being vacated by the court, or modified by the court. House Bill 663 will allow the parties to go directly into court and compel arbitration if the parties refuse to participate, or to enforce/confirm the award. He presented copies of the section (Exhibit #1). This would allow for a shorter process. He told the Committee it would not require arbitration be in labor agreements. If the agreement has arbitration this act can be used to compel, enforce the award, or set the award aside.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Nathe asked Mr. Campbell if House Bill 663 had anything to do with interest arbitration. Mr. Campbell stated it did not. House Bill 663 deals with labor agreements and grievance arbitration and, if arbitration is already in the

collective bargaining agreements. It has nothing to do with interest arbitration or replacing this with the right to strike.

Senator Nathe asked Mr. Campbell to explain grievance arbitration and interest arbitration. Mr. Campbell stated in a collective bargaining agreement there may be a disagreement about how the contract is interpreted or applied. An individual would have the right under their collective bargaining agreement to file a grievance. Under typical circumstances the grievance would end in arbitration. This agreement and the procedure to get there is in the collective bargaining agreement. If there is a dispute as to how the contract is applied or interpreted it is sent to arbitration.

Senator Nathe asked Mr. Campbell to explain interest arbitration. Mr. Campbell stated interest arbitration is used as the "last step" in the bargaining process instead of striking. He explained House Bill 663 does not deal with interest arbitration.

Senator Pipinich commented most all bargaining units have arbitration for grievances. Mr. Campbell explained, at the present time, if a grievance is filed and an employer refuses to participate in arbitration to enforce the contract, an unfair labor practice can be filed or go to court under a breach of contract. House Bill 663 would allow going directly into court only if it is in the contract. He stated it is a "short way to get there" in order to move the agenda, "get on with the arbitration, and solve the problem. It saves "time and dollars".

Senator Devlin asked Mr. Campbell if the School Board Association is in favor of this why are they not at this hearing. Mr. Campbell explained they do not oppose it.

Senator Towe asked Mr. Campbell why this does not apply now. By putting in the "three sections" it states they "shall apply" in each case; to compel arbitration or stay arbitration in court, to confirm the award in court, and to use the state district court. Mr. Campbell explained in order for the Uniform Arbitration Act to apply to labor agreements the parties have to claim to use the whole act. In most labor contracts a process, i.e., selection of an arbitrator, is agreed upon. Mr. Campbell explained they do not want to use the whole process; it is not necessary because it is bargained into a contract and the parties agreed to the process. The mechanism of "how arbitrations are going to work" is not needed.

Senator Towe pointed out it says "arbitration between employers and employees are valid and enforceable and may subject to all or portions of this chapter if the agreement so specifies", except for the two sections would have to apply in each case. He asked Mr. Campbell if he were saying the five sections apply in every case, and one cannot opt out. Mr. Campbell told the Committee that were the case.

Senator Towe asked why this needs to be mandated when one can opt into it now. Mr. Campbell explained under the current statute, not to confuse the Uniform Arbitration Act and get it involved in the collective bargaining agreement, an arbitrator's award can be set aside or vacated. This applies in all cases, the Uniform Arbitration Act can be used to do this. He is asking that under all case they should also be able to be compel it or force the award.

Senator Towe asked if Mr. Campbell were asking this to be automatic without having to stipulate to it in the collective bargaining agreement. Mr. Campbell explained it is not anything which cannot be done, it is "a longer process to get there".

Senator Nathe asked if House Bill 663, in any way, impact legislation in Senate Education. Mr. Campbell explained there is a bill which states all decisions of the trustees must use the administrative procedures which came directly from the Canyon Creek Supreme Court decision. It will put in statute what the Supreme Court says is the process now. An exception in that legislation, is the process need not be used if a provision exists in the statute for direct appeal.

Senator Nathe asked if this would eliminate the problems school boards have with two appeals being filed simultaneously. Mr. Campbell told the Committee he did not know if it would eliminate that problem. This type of problem would be bargained into the contract saying if the statutory appeal process is used the right to come under the contract is forfeited.

Senator Aklestad asked if under an existing collective bargaining agreement, if this issue is not specified, one would be outside the parameters of the Uniform Arbitration Act. Mr. Campbell told the Committee that is correct except for the two provisions which apply all the time. An arbitration award can be modified or vacated under the current statute because those two provisions apply in all cases.

Senator Aklestad asked if House Bill 663 would insure that all five provisions would automatically be under the Uniform Arbitration Act without having it in the collective bargaining agreement. Mr. Campbell explained the added sections would apply under all circumstances.

Senator Aklestad commented it would not need to be specified in the collective bargaining agreement. Uniform Arbitration would automatically be encompassed in those five sections. Mr. Campbell explained it is not that all the Uniform Arbitration Act would apply, only those two concepts; to compel arbitration and to enforce the arbitration award.

Senator Aklestad asked Mr. Campbell to present a situation, irregardless of the section, with the difference between having a collective bargain agreement and having those provisions in that

agreement, and the difference with not having them in the agreement where the Uniform Arbitration Act does not apply. He asked what the steps were, what took place, and what awards are given at a particular time through those steps. Mr. Campbell told the Committee with current status and without this change, if a school district has in the collective bargaining agreement, through the bargaining process, agreed to arbitration, and a grievance is filed, and the district has chosen not to participate (they will not select an arbitrator); the choice is to go through the process with the Administrative Procedures Act. First the county superintendent, then the appeal to the state superintendent, and into court on a breach of contract. He explained this is not a new concept, it is the process now. Under the Canyon Creek decision this has to be the process unless an exemption or procedure is specified in statute. House Bill 663 would solve this problem. He explained with House Bill 663 if the district refuses to participate in the arbitration process it could go directly into court under Section 27-5-115 "Proceedings to compel arbitration" which would compel the parties to participate in the process.

Senator Aklestad asked for an example in which arbitration was not in the collective bargaining agreement. Mr. Campbell explained if arbitration is not in the contract, as a final step to the grievance process, it would vary by contract. Some would stop with the school board if it were bargained in that manner. In the cases where arbitration does not exist, it depends on what the procedure is. Mr. Campbell explained House Bill 663 would only apply if there is arbitration, collectively agreed to in the contract.

Senator Aklestad asked if arbitration is not in the collective bargaining agreement would House Bill 663 apply. Mr. Campbell explained House Bill 663 only deals with the arbitration process.

Senator Aklestad asked if House Bill 663 is only eliminating (in Mr. Campbell's example) the steps with the county superintendent and state superintendent. Mr. Campbell commented these were the two steps in the Administrative Procedures Act; then that can be appealed into district court.

Senator Aklestad asked these two entities would be removed from the scenario. Mr. Campbell told the Committee this was correct. He explained "they haven't yet been in" because this is a new Supreme Court decision and a bill coming through the process.

Senator Towe asked if without House Bill 663 one cannot go directly into court to compel arbitration. Mr. Campbell explained this was correct. A case in Canyon Creek by Billings where a breach of contract occurred. Arbitration was not in the contract. It went to court to enforce the contract. It went to the Supreme Court denied it, and remanded it back saying the

Administrative Procedures was not used.

Senator Towe asked if the federal district court has been excluded. Mr. Campbell told the Committee he could not answer the question. He commented "why would you want to go to federal court to compel". Senator Towe said this is done "constantly". He expressed concern about limiting an opportunity to go to federal court.

Senator Keating pointed to Line 17. Senator Towe explained the employer and employee in a collective bargaining situation can decide what portion of the Uniform Arbitration Act to use, except these five sections cannot be excluded.

Senator Aklestad commented under the provisions being added, will anything supersede the National Labor Relations Board.

Senator Towe asked Mr. Campbell to acquire information regarding this. He commented the right to go to federal court to compel arbitration or confirm an award may be excluded.

Mr. Campbell told the Committee that was not the intent. He explained if possible that section could be left out. If it is a limiting factor it would not be critical to the purpose.

Senator Towe commented the federal laws sometimes say federal law applies unless the state has a contrary law. This would put a contrary law on the books, precluding going to federal court. He suggested this may not be the case, but the information should be obtained from someone familiar with federal jurisdiction.

Senator Towe suggested Tom Gomez clarify the language.

Closing by Sponsor:

Representative Dowell closed on House Bill 663. He told the Committee if there is a contract with arbitration bargained in, and a grievance is filed, House Bill 663 would provide a mechanism to bypass the administrative appeals process. It would save money and time.

HEARING ON HOUSE JOINT RESOLUTION 29

Presentation and Opening Statement by Sponsor:

Representative Carolyn Squires presented House Joint Resolution 29 to the Committee. She explained HJR 29 became a committee bill when funding was cut for dislocated workers through Title III of the Job Training Partnership Act (JTPA). Many states' funding were cut by the US Department of Labor, Montana being among them. She told the Committee HJR 29 will be

ROLL CALL

NATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/5/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

DATE 3/5/91

COMMITTEE ON Senate Labor

HB 305 - HB 663 - HJR 29

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Bob Jensen	Dept of Labor & Industry	HB-305	X	
Wm O Jean	" " " " "	HB 305	✓	
DARRELL HOLZER	MT. STATE AFL-CIO	HJR 29	✓	
Marianne Symons	Dept of Labor and Industry	HB 305	✓	
BOB ANDERSON	DLI	HJR 29		
Bob Heiser	AFCIO	HJR 29	✓	
Phil Campbell	Mont. Ed. Assoc.	HB 663	✓	
Sue Mohr	MJTP	HJ 29	✓	
Kay Merchen	MJTP - BOS PIC	HJ 29	✓	
Michael Sherwood	MTLA	HB 305	Yes if amended	

(Please leave prepared statement with Secretary)

IN as amended.

Amendments, Discussion, and Votes:

Senator Keating moved to amend House Joint Resolution (HJ002901.ATG). Motion CARRIED UNANIMOUSLY.

Recommendation and Vote:

Keating BE CONCURRED IN motion CARRIED with Senator Aklestad voting NO. Senator Keating will carry House Joint Resolution 29 to the Senate.

EXECUTIVE ACTION ON HOUSE BILL 356

Motion:

Senator Doherty moved House Bill 356 BE CONCURRED IN as amended.

Discussion:

Senator Keating commented House Bill 356 is "DO NOT CONCUR" because union people on a board but are not including management people.

Amendments, Discussion, and Votes:

Senator Doherty moved the amendments by the Department of Administration. He explained these would address Senator Keating's concern. Motion CARRIED UNANIMOUSLY.

Recommendation and Vote:

Doherty motion to BE CONCURRED IN as amended CARRIED with Senator Aklestad, Senator Devlin, and Senator Keating voting NO. Senator Doherty will carry House Bill 356 to the Senate.

EXECUTIVE ACTION ON HOUSE BILL 663

Motion:

Senator Aklestad moved House Bill 663 NOT BE CONCURRED IN.

Senator Blaylock moved, as a substitute motion, House Bill 663 BE CONCURRED IN.

Discussion:

Senator Aklestad commented under 27-5-115 MCA, House Bill

663 may supersede the National Labor Relations Board.

Recommendation and Vote:

Aklestad motion FAILED with four (4) YES (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe), five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe).

Blaylock motion CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe), four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe). Senator Towe will carry House Bill 663 on the Senate floor.

ADJOURNMENT

Adjournment At: 6:15 p.m.

SENATOR THOMAS E. TOWE, Vice Chairman

LINDA CASEY, Secretary

TET/llc

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/12/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 13, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 663 (third reading copy -- blue), respectfully report that House Bill No. 663 be concurred in

Signed: _____
Thomas E. Towe, Vice-Chairman

43 3/15/91
Amd. Adopted

Secy. of Senate